

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLANT**

76-1580

To be argued by
NORMAN J. MORDKOFKY, ESQ.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

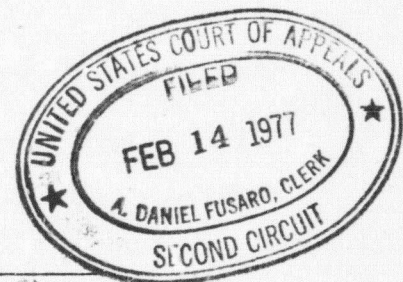
Appellee,

- against -

LEROY TURNER,

Appellant.

Docket No. T6656



BRIEF FOR APPELLANT
PURSUANT TO
ANDERS v. CALIFORNIA

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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QUESTION PRESENTED

Whether there are any non-frivolous issues to be raised for
this Court's review?

STATEMENT PURSUANT TO RULE 28(a)(3)

Preliminary Statement

This appeal is from a judgment of the United States District Court for the Eastern District of New York, (Hon. Jacob Mishler, Ch. J.), entered on October 1, 1976, convicting the appellant, Turner of Bank Larceny in violation of Title 18, U.S.C. §2113(b) and §2, and Conspiracy in violation of Title 18, U.S.C. §371, upon the appellant's plea of guilty, as aforesaid. Appellant was sentenced to serve a term of imprisonment of five (5) years to be followed by an indeterminate term of imprisonment not to exceed ten (10) years, both sentences to run consecutively. The defendant filed a notice of appeal on his own behalf on October 19, 1976, and the undersigned was subsequently reappointed to continue as counsel for the defendant to perfect the appeal.

Statement of Facts

The appellant was charged under a three-count indictment with the crimes of bank robbery in violation of Title 18, U.S.C. §2113(a) and §2; and bank robbery in violation of Title 18, U.S.C. §2113(b) and §2; and conspiracy to

commit the foregoing in violation of Title 18, U.S.C. §371. On September 21, 1976, upon the appellant's waiver of indictment, the Government filed a superseding information charging bank larceny in violation of Title 18, U.S.C. §2113(b) and §2.

The uncontested facts before the Grand Jury establish that the appellant, acting in concert with three other persons, on August 27, 1975, while armed entered the Carver Federal and Savings Loan Association, located at 1273 Fulton Street, Brooklyn, New York, and forcibly stole the sum of \$9,700.00. The bank was equipped with time-lapse cameras which, upon signal, were converted to motion pictures. The cameras took more than 3,000 frames of the robbery in progress. At the time of the robbery the appellant herein was clad in distinctive checked suit, with a well-defined plaid.

Approximately, ten days after the bank robbery had occurred, there was an unrelated shooting incident involving New York City police officers. That incident took place in Manhattan. The appellant herein was arrested and charged with attempted murder, in connection therewith. Ten days later while in Riker's Island, the appellant herein indicated to certain New York City police officers that he had certain information which would lead them to the perpetrators of still another murder of police officers, that of Sergeant Reddy and Officer Glover.

The appellant permitted the police officers to go to his apartment for the express purpose of obtaining a particular address book which contained information concerning perpetrators of the "Reddy-Glover" murders. Although, authorized only to obtain that address book and nothing else, the police officers searched the apartment and located the suit which the appellant had worn during the course of the robbery herein.

The appellant moved for an order suppressing evidence of that suit. His motion was granted only to the extent of ordering a hearing before the commencement of the trial. The appellant also moved to dismiss the Grand Jury indictment upon the grounds that there was no legal evidence before the grand jury which would warrant the finding of the indictment herein. The appellant asserted that pictures of the bank robbery in progress were displayed to neighborhood residents, who were able to identify the defendant as being portrayed in the pictures. Thereafter, although the defendant was identified and in custody, there were no identifying procedures held by the police and there was no line-up. The appellant believed that the only witnesses who testified before the Grand Jury were not witnesses to the bank robbery, but merely those who said that they had seen the photographs of the robbery in

progress, and knew the persons depicted therein to be the appellant and his co-defendants. Subsequent investigation seems to reveal that individual photographs of the defendant were placed in an array and that the victims of the robbery were able to identify the appellant as the perpetrator.

POSSIBLE LEGAL ISSUES

I.

One of the possible issues presented on this appeal is whether the New York City police officers who were authorized to go to the appellant's apartment for the express purpose of obtaining an address book, were also permitted to conduct the further search and obtain the suit worn during the robbery.

The Government took the position that the appellant had not made a sufficient showing of standing because he had failed to show that the apartment was his. The Government asserted that once the appellant had authorized the police officers to enter the apartment to search for the address book, that the appellant could not restrict the search for that purpose only. However, the court had ordered a hearing on that issue to be held immediately before trial. When the defendant entered his plea of guilty he withdrew that motion; and, therefore, it has been eliminated as a subject for review by this court.

II.

The appellant had also asserted that the evidence before the Grand Jury was not legally sufficient to indict. Subsequent information called to counsel's attention, now shows that the position taken upon the motion was not factually accurate, in that the Government did pursue identifying procedures which are legally acceptable. Moreover, it would not have been sufficient to cause the dismissal of the indictment or to have the court set aside the conviction upon the appellant's plea of guilty. It would appear that there was competent evidence before the Grand Jury to merit the finding of the indictment and regardless of that fact, the entry of the guilty plea vitiated any claim, the appellant may otherwise have had.

CONCLUSION

For the foregoing reasons, there are no non-frivolous issues which may be raised on appeal for this court's review. Accordingly, the motion pursuant to Anders v. California, 386 U.S. 738 (1967), should be granted and the undersigned should be relieved as the appellant's counsel on appeal.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

: Docket No T6656 & 76-1580

Appellee,

:

- against -

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AFFIDAVIT
OF SERVICE
BY MAIL

LEROY TURNER,

:

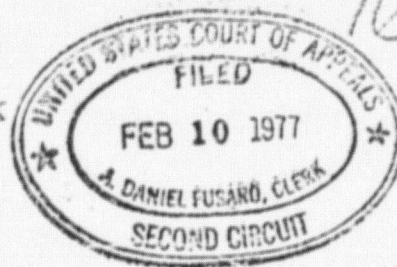
Appellant.

:

STATE OF NEW YORK)

:

COUNTY OF BRONX)



JACQUELINE SABATINO, being duly sworn, deposes and says:

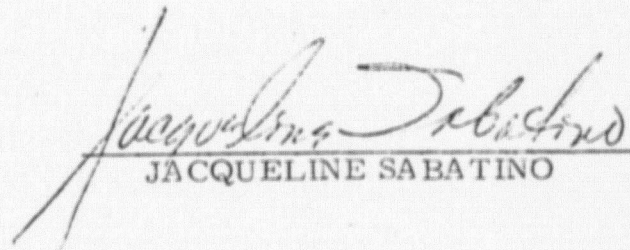
I am not a party to the action, am over eighteen (18) years of age and reside at 910 Sheridan Avenue, The Bronx, New York.

On February 1, 1977 I served a true copy of two (2) copies of the Ander's Brief together with a Notice of Motion and Affidavit in Support of a motion to permit the late filing of the Ander's Brief and an affidavit in support of the application permitting the filing of an Ander's Brief in connection with the captioned appeal in the following manner:

By mailing the same in a sealed envelope, with postage prepaid thereon
in an official depository of the United States Postal Service within the State of New York
addressed to the last known address of the addressee as indicated below:

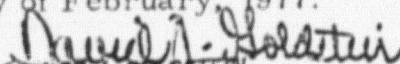
Hon. David G. Trager
United States Attorney
Eastern District of New York
Federal Building
225 Cadman Plaza East
Brooklyn, New York 11201

Attention: A. U. S. A. Ethan Levin-Epstein


JACQUELINE SABATINO

Sworn to before me this

9th day of February, 1977.


DAVID J. GOLDSTEIN
Notary Public, State of New York
No. 44-4625417
Resided in Rockland County
Commission Expires March 30, 1978